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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
8 **SAN FRANCISCO DIVISION**

9 CHRISTINE HOLT, individually and on
behalf of all others similarly situated,

10 *Plaintiff,*

11 v.

12 FACEBOOK, INC., a Delaware corporation,

13 *Defendant*

CASE NO. 16-CV-2266

COMPLAINT FOR:

1. **Violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227;**
2. **Violations of Cal. Bus. & Prof. Code §§ 17200, et seq.**

**CLASS ACTION
JURY TRIAL DEMANDED**

16 Plaintiff Christine Holt (“Holt”) brings this Class Action Complaint and Demand for Jury
17 Trial against Defendant Facebook, Inc. (“Facebook”) to stop its practice of sending unsolicited text
18 messages to the cellular telephones of consumers nationwide and to obtain redress for all persons
19 injured by its conduct. Plaintiff, for her complaint, alleges as follows upon personal knowledge as to
20 herself and her own acts and experiences, and, as to all other matters, upon information and belief,
21 including investigation conducted by her attorneys.

NATURE OF THE ACTION

1
2 1. Defendant Facebook owns and operates four of the top six social networks in the
3 world, including its flagship social network—www.facebook.com.¹

4 2. Facebook relies almost exclusively on advertising services to generate revenue
5 through its assortment of social media networks. In order to capitalize on these advertisements,
6 Facebook collects and stores an array of user data, including the websites its users visit, the articles
7 its users read, and its users’ cellular telephone numbers.

8 3. Facebook then uses much of this information to deliver targeted ads to its user base.
9 But Facebook also goes one step further and uses its members’ cellular telephone information to
10 send numerous unsolicited text messages to thousands of cellular telephone numbers, without the
11 consent of the recipients. Defendant sends these text messages using an automatic telephone dialing
12 system that has the capacity to store and dial telephone numbers, *en masse*. Because these text
13 messages were sent without the prior express consent of the text recipients, Defendant violated the
14 Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”).

15 4. The TCPA was enacted to protect consumers from unauthorized calls exactly like
16 those alleged in this Complaint—autodialed solicitations to cellular phone numbers, placed without
17 each consumer’s prior express consent.

18 5. Defendant’s violations caused Plaintiff and the members of the putative Classes of
19 consumers (defined below) to experience actual harm, including the aggravation, nuisance, and
20 invasion of privacy that necessarily accompanies the receipt of unsolicited text messages.

21 6. In response to Defendant’s unlawful conduct, Plaintiff filed the instant lawsuit,
22 seeking an injunction requiring Defendant to cease all unsolicited text messaging, prevent similar
23 conduct by Defendant in the future, as well as an award of statutory damages to the members of the
24 putative Classes under the TCPA, together with costs and reasonable attorneys’ fees.

25 ¹ Matt Kapko, *15 Social networks with the most active users in 2015*, CIO (Dec. 11, 2015,
26 5:00AM), <http://www.cio.com/article/3014362/social-networking/15-social-networks-with-the-most-active-users-in-2015.html> (last visited April 26, 2016).

1 **PARTIES**

2 7. Plaintiff Christine Holt is a natural person domiciled in the District of Columbia.

3 8. Defendant Facebook is a corporation organized and existing under the laws of the
4 State of Delaware, with its principal place of business located at 1601 Willow Road, Menlo Park,
5 California 94025. Defendant Facebook regularly does business throughout the State of California
6 and in this District.

7 **JURISDICTION**

8 9. This Court has original jurisdiction over the claims in this action pursuant to 28
9 U.S.C. § 1331 because they arise under the Telephone Consumer Protection Act, 47 U.S.C. § 227,
10 which is a federal statute.

11 10. The Court has personal jurisdiction over Defendant and venue is proper in this
12 District pursuant to 28 U.S.C. §1391(b)(2) because Defendant resides in this District, transacts
13 significant business within this District. Furthermore, the conduct and events giving rise to
14 Plaintiff’s claims—including the development, execution, and approval of Facebook’s marketing
15 and advertising strategies and campaigns that led to the mass text messaging campaign at issue—
16 occurred in and/or emanated from the State of California generally, and this District in particular.

17 **INTRADISTRICT ASSIGNMENT**

18 11. Pursuant to Civil Local Rule 3-2(d), this case should be assigned to the San
19 Francisco Division.

20 **COMMON FACTUAL ALLEGATIONS**

21 *Facebook’s Business Model*

22 12. Facebook is a global social network that enables people to connect, share, discover,
23 and communicate with each other via their mobile devices and personal computers. Since its
24 founding in 2004, Facebook has accumulated more than 1.5 *billion* users.

25 13. Each of these more than 1.5 billion users accesses Facebook for free. Facebook
26 doesn’t charge its users for access or use of its services and even boasts that Facebook “I[s] free and
27

1 always will be.”² Instead of charging its user base for access, Facebook capitalizes on them by
2 collecting their valuable personal information, including their geolocations, browsing histories and
3 patterns, education, interests, and telephone numbers.

4 14. By expanding its user base and promoting user interaction, Facebook is able to
5 expose more people to advertising—thereby increasing its own revenues.

6 15. Thus, any invitation to join, post a message to, or interact with Facebook is
7 ultimately meant to promote the service and entice users to take an action that will result in a
8 financial benefit to Facebook.

9 16. In order to increase consumer exposure to the advertisements hosted on Facebook, it
10 relies on—and exploits—the massive database of consumer information that it collects from its
11 users.

12 Facebook’s Unsolicited Text Messages

13 17. Facebook exploits its vast cache of personal information through the tried and true
14 method of mobile marketing. Specifically, Facebook sends automated text messages to the cellular
15 telephone numbers it collects from its users’ accounts.

16 18. However, Facebook fails to update its databases to account for circumstances where
17 its users have deactivated or relinquished the phone number that they previously provided to the
18 social media service.

19 19. Cellular telephone subscribers deactivate and relinquish their cellular telephone
20 numbers for any number of reasons. Once deactivated, the cellular telephone carrier reassigns the
21 number to another subscriber—a practice known as “recycling.” Recycling times (*i.e.*, the time
22 between deactivation and reassignment) vary across carriers, generally ranging from thirty days to
23 six months depending on location and demand. During the recycling period, the cellular telephone
24 number is considered disconnected.

25 20. Relevant here, when a Facebook user deactivates their phone number, and the
26 number eventually gets reassigned to a new consumer—Facebook keeps sending multiple

27 ² See Facebook, <https://www.facebook.com/> (last visited April 26, 2016).

1 automated text messages to the same number, and its new owner, without the new owner's consent.

2 21. In some instances (but not all), the prior owner of a recycled telephone number may
3 have provided Facebook with their telephone number, or even consented to receiving text messages
4 from Facebook. However, regardless of any consent provided by the prior owner, that consent
5 cannot be transferred to the new owner. Ultimately, new owners of recycled cellular telephone
6 numbers are given no choice in receiving (and paying for) Facebook's unsolicited text messages.

7 22. The mobile marketing industry is acutely aware of cellular telephone number
8 recycling and, in particular, the risk associated with sending text messages to non-consenting
9 recycled numbers. For example, the Mobile Marketing Association ("MMA") publishes specific
10 guidelines based on accepted industry practices for all mobile marketers. In its October 2012 U.S.
11 Consumer Best Practices for Messaging, the MMA recommends that mobile marketers, like
12 Facebook,

13 ...have appropriate and effective systems and processes for managing
14 deactivation and recycled number information. These systems and
15 processes should be designed to ensure that mobile content programs
16 subscribed to by previous holders of a specific phone number do not
continue to be delivered or billed to a subsequent holder of that number
when it is reassigned.

17 The MMA further advises mobile marketers to "process deactivation information within
18 three business days of receipt."³

19 23. Moreover, numerous commercially available services exist to help mobile marketers,
20 such as Facebook, identify and exclude recycled numbers and non-consenting cellular subscribers
21 from their texting campaigns. These services identify disconnected numbers before they are
22 recycled and alert mobile marketers that any consent associated with those telephone numbers in the
23 past had been terminated.

24 24. Despite these industry guidelines and practices, and other available resources

25 ³ The MMA is a global trade organization that issues codes of conduct, best practices,
26 guidelines, rules and instructions for companies engaged in mobile marketing. Its
27 U.S. Consumer Best Practices for Messaging are based on accepted industry practices, common
wireless carrier policies and regulatory guidance. *See U.S. Consumer Best Practices for Messaging*,
Mobile Marketing Association (Oct. 16, 2012), available at <http://www.ctia.org/docs/default-source/default-document-library/industry-best-practices.pdf?sfvrsn=0> (last visited April 26, 2016).

1 available to it, Facebook failed (and continues to fail) to take the necessary steps to ensure that its
2 automated text messages are sent only to consenting recipients.

3 25. To that end, Facebook simply treats the new recycled cellular telephone number
4 owner as if he or she were the previous owner. If the previous owner gave consent to receive
5 Facebook's text messages, Facebook continues to treat that consent as valid. Facebook then sends
6 multiple text messages to the new owner's cellular telephone without their consent. New owners are
7 then forced to incur the cost and invasion of privacy of receiving Facebook's unauthorized text
8 messages.

9 26. Notably, new owners are not provided any explicit means to contact Facebook to
10 make the messages stop. In some instances, the messages do not even identify "Facebook" as the
11 sender, and some consumers—having no prior relationship with Facebook—may be completely
12 unaware that Facebook is the sender.

13 27. If the telephone number is associated with its previous owner's online Facebook
14 account, the new cellular subscriber has no way of accessing that account (belonging to the previous
15 owner) to opt out of receiving Facebook's text messages. And, worse yet, Facebook often ignores
16 direct demands from the text recipients that the text messages stop.

17 28. Ignoring consumer demands that the texts cease is particularly easy for Facebook
18 because it makes it notoriously difficult for consumers to opt-out of or unsubscribe from its texting
19 campaigns.

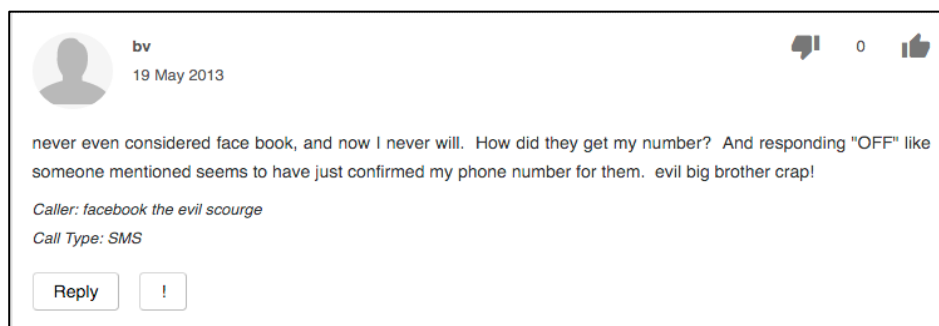
20 29. In fact, Facebook fails to provide *any* information or instruction in its text messages
21 informing the recipients how to make the text messages stop.

22 30. Because consumers are not provided sufficient information to make Facebook's text
23 messages cease, they often reply with repeated—and ignored—demands that Facebook stop sending
24 the unlawful messages.

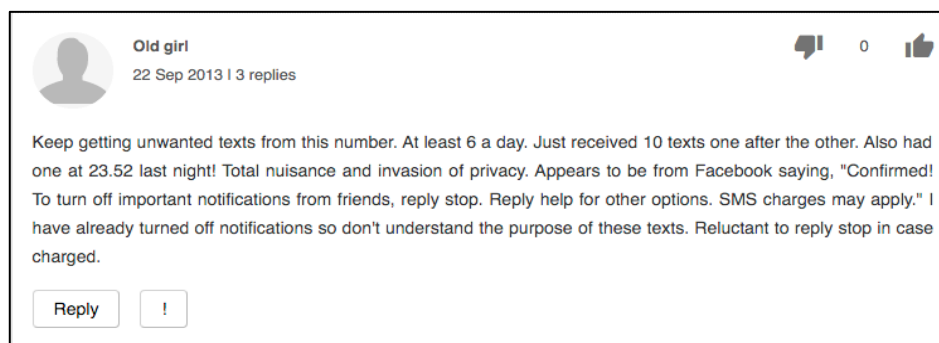
25 31. Any stop request sent by a consumer is, by design, sent to Facebook's short code
26 32665, directly informing Facebook (as intended) that any subsequent messages are unauthorized.

27 32. The internet is replete with consumer complaints arising from Facebook's texting
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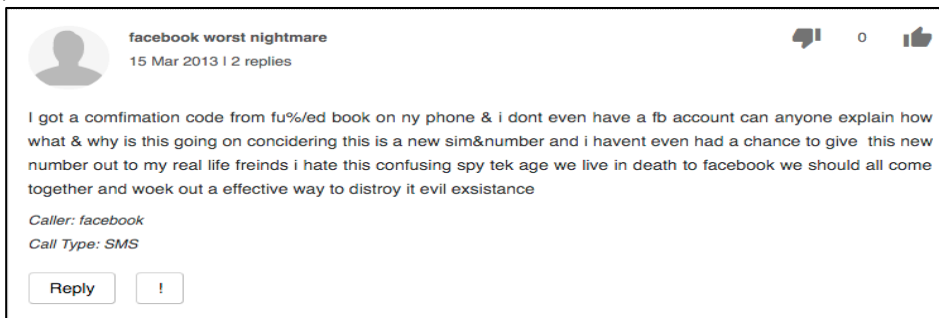
1 campaign originating from the “32665” number. (See Figures 1–5.)



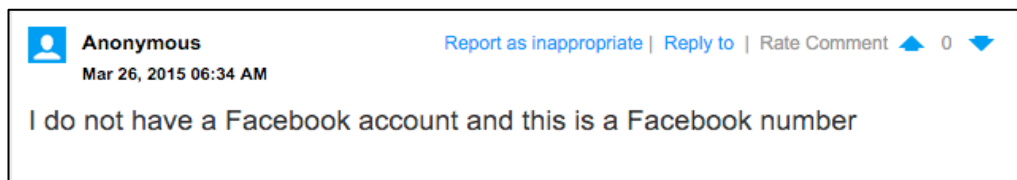
8 (Figure 1.)⁴



15 (Figure 2.)

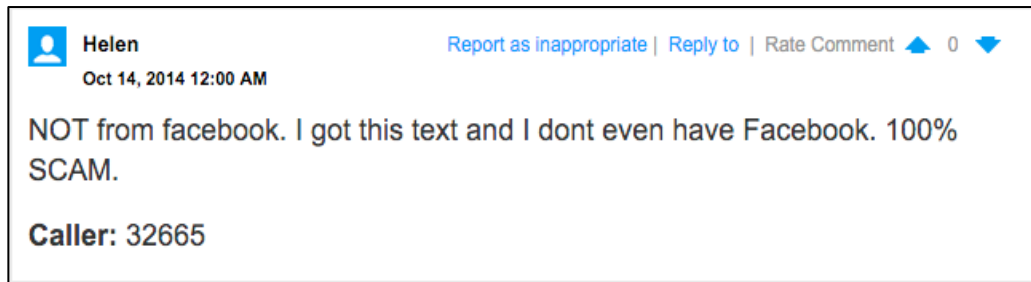


21 (Figure 3.)



25 ⁴ Figures 1–3 are just a few examples of the hundreds of consumer complaints regarding
 26 Facebook’s conduct available on a single website. See <http://whocallsme.com/Phone-Number.aspx/32665> (last visited April 26, 2016). Likewise, Figures 4–5 are representative of a
 27 sampling of the numerous complaints available at another website. See <https://www.everycaller.com/phone-number/3-2665/> (last visited April 26, 2016).

1 (Figure 4.)



7 (Figure 5.)

8 33. Each of the text messages sent by Facebook was made with equipment having the
9 capacity to store or produce telephone numbers, and to dial such numbers, *en masse*, without any
10 need for human intervention. Furthermore, these campaigns were not executed with the prior
11 express consent of the text recipients in violation of the TCPA.

12 34. Despite knowing that its text messages violate the TCPA, Defendant continues to
13 send thousands of text messages to recycled numbers without the text recipients' consent.
14 Facebook's ongoing text messaging is hardly surprising given that each text message sent by
15 Facebook has the potential to directly increase its advertising revenues.

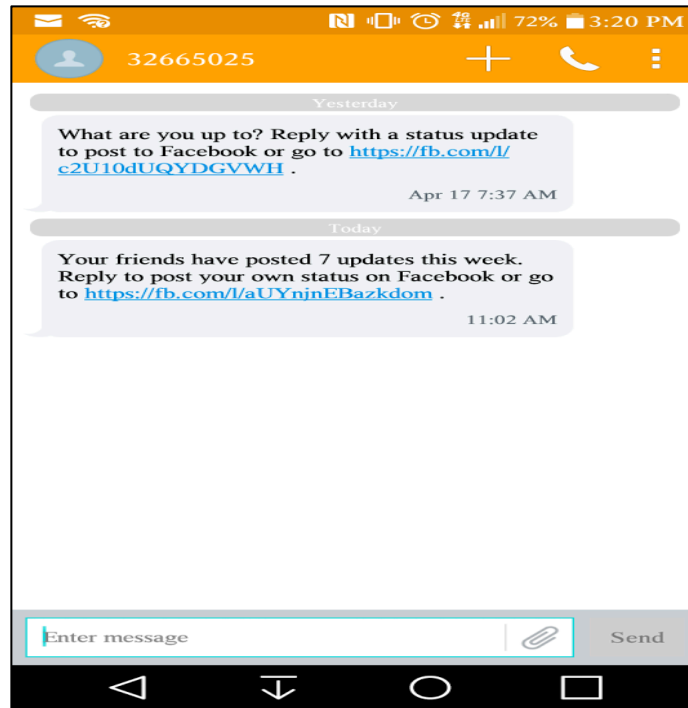
16 35. The TCPA was enacted to give consumers control over how and where they receive
17 calls and text messages. When Facebook's text messages are sent to consumers without their
18 consent, it fails to address or respect the limitations imposed by the TCPA, thereby taking control
19 away from consumers and violating the spirit and letter of the TCPA.

20 **FACTS SPECIFIC TO PLAINTIFF CHRISTINE HOLT**

21 36. Plaintiff Christine Holt is the subscriber to and primary user of her personal cellular
22 telephone number.

23 37. In or around March 2016, Plaintiff obtained a new cellular telephone number from
24 MetroPCS. Almost immediately after obtaining her new cellular phone number, Plaintiff began
25 receiving impersonal, promotional text messages. The messages were identified cryptically from
26 "32665" and "32665025" which Plaintiff later learned were short codes owned and/or operated by
27 Facebook.

1 38. Beginning in March of 2016 and continuing through April 2016, Plaintiff Holt
2 received multiple text messages from 32665025, asking her to post status updates to Facebook. For
3 example, on April 17, 2016, Plaintiff received the following unsolicited text messages:



16 (Figure 6.)

17 39. The website “http://fb.com,” in turn, redirects visitors to www.facebook.com.
18 On or about April 13, 2016, Plaintiff replied to Defendant’s text messages with multiple written
19 demands that Facebook stop texting her—but Defendant disregarded these demands and continued
20 to send unsolicited text messages to Plaintiff, including as recently as April 20, 2016.

21 40. Plaintiff is not a www.facebook.com user and never provided her prior express
22 consent for Facebook to contact her. She did not express an interest in receiving information about
23 Facebook to any person or entity, including Defendant.

24 41. Plaintiff did not provide her phone number to Defendant or any third party operating
25 on its behalf, let alone provide her consent to receive text message calls from, or on the behalf of,
26 Facebook.

1 counsel and Defendant's counsel; and (6) the legal representatives, successors, and assigns
2 of any such excluded persons.

3 47. **Numerosity:** The exact size of each Class is unknown and not available to Plaintiff
4 at this time, but it is clear that individual joinder is impracticable. On information and belief,
5 Defendant has sent text messages to thousands of consumers who fall into the definitions of the
6 Classes. Members of the Classes can be identified through Defendant's records.

7 48. **Typicality:** Plaintiff's claims are typical of the claims of other members of the
8 Classes in that Plaintiff and the members of the Classes sustained damages arising out of
9 Defendant's uniform wrongful conduct.

10 49. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect
11 the interests of the Classes and has retained counsel competent and experienced in complex class
12 actions. Plaintiff has no interests antagonistic to those of the Classes, and Defendant has no defenses
13 unique to Plaintiff.

14 50. **Commonality and Predominance:** There are many questions of law and fact
15 common to the claims of Plaintiff and the Classes, and those questions predominate over any
16 questions that may affect individual members of the Classes. Common questions for the Classes
17 include, but are not necessarily limited to the following:

18 **No Consent Class:**

- 19 (a) Whether Defendant's text messages were sent to consumers' cellular
20 telephones utilizing an automatic telephone dialing system;
- 21 (b) Whether Defendant maintains records of prior express consent to place the
22 text messages it sent to consumers;
- 23 (c) Whether Defendant's conduct violated the TCPA; and
- 24 (d) Whether Plaintiff and the members of the No Consent Class are entitled to
25 statutory and treble damages based on the willfulness of Defendant's
26 conduct.
- 27

1 **Stop Text Class:**

- 2 (a) Whether Defendant’s text messages were sent to consumers’ cellular
3 telephones utilizing an automatic telephone dialing system;
- 4 (b) Whether Defendant continued to send messages to the Stop Text Class’s
5 cellular telephones after receiving a request that the text messages cease;
- 6 (c) Whether Defendant’s conduct violated the TCPA;
- 7 (d) Whether Plaintiff and the members of the Stop Text Class are entitled to
8 statutory and treble damages based on the willfulness of Defendant’s
9 conduct.

10 51. **Superiority:** This case is also appropriate for class certification because class
11 proceedings are superior to all other available methods for the fair and efficient adjudication of this
12 controversy. Joinder of all parties is impracticable, and the damages suffered by the individual
13 members of the Classes will likely be relatively small, especially given the burden and expense of
14 individual prosecution of the complex litigation necessitated by Defendant’s actions. Thus, it would
15 be virtually impossible for the individual members of the Classes to obtain effective relief from
16 Defendant’s misconduct. Even if members of the Classes could sustain such individual litigation, it
17 would still not be preferable to a class action, because individual litigation would increase the delay
18 and expense to all parties due to the complex legal and factual controversies presented in this
19 Complaint. By contrast, a class action presents far fewer management difficulties and provides the
20 benefits of single adjudication, economy of scale, and comprehensive supervision by a single Court.
21 Economies of time, effort and expense will be fostered, and uniformity of decisions ensured.

22 **FIRST COUNT**
23 **Violation of the TCPA, 47 U.S.C. § 227**
24 **(On behalf of Plaintiff and the No Consent Class)**

25 37. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

26 38. Defendant and/or its agents sent unsolicited text messages to cellular telephone
27 numbers belonging to Plaintiff and the members of the No Consent Class without their prior express
28 consent.

1 39. Defendant sent the text messages, or had them sent on its behalf, using equipment
2 that had the capacity to store or produce telephone numbers to be called using a random or
3 sequential number generator, and to dial such numbers, *en masse*.

4 40. These text messages were sent to Plaintiff and other members of the No Consent
5 Class simultaneously and without human intervention.

6 41. By sending or having these unsolicited text messages sent to Plaintiff and the No
7 Consent Class, Defendant has violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result of Defendant's
8 unlawful conduct, the members of the No Consent Class suffered actual damages in the form of
9 monies paid to receive the unsolicited text messages on their cellular telephones and, under 47
10 U.S.C. § 227(b)(3)(B), are each entitled to, *inter alia*, a minimum of \$500.00 in damages for each
11 such violation of the TCPA.

12 42. Should the Court determine that Defendant's conduct was willful and knowing, the
13 Court should, pursuant to 47 U.S.C. § 227(b)(3)(C), treble the amount of statutory damages
14 recoverable by Plaintiff and the other members of the No Consent Class.

15 **SECOND COUNT**
16 **Violation of the TCPA, 47 U.S.C. § 227**
(On behalf of Plaintiff and the Stop Text Class)

17 43. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

18 44. Defendant and/or its agents sent unsolicited text messages to cellular telephone
19 numbers belonging to Plaintiff and the other members of the Stop Text Class after Plaintiff and the
20 members of the Class had communicated to Defendant that they no longer wished to receive text
21 messages from Defendant.

22 45. As such, Facebook did not have the required prior express consent of the text
23 message recipients at the time the text messages in question were sent.

24 46. Defendant sent the text messages, or had them sent on its behalf, using equipment
25 that had the capacity to store or produce telephone numbers to be called using a random or
26 sequential number generator, and to dial such numbers, *en masse*.

27 47. These text messages were sent to Plaintiff and other members of the Stop Text Class

1 simultaneously and without human intervention.

2 48. By having these unsolicited text messages sent to Plaintiff and the Stop Text Class,
3 Defendant has violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result of Defendant's unlawful conduct,
4 the members of the Stop Text Class suffered actual damages in the form of monies paid to receive
5 the unsolicited text messages on their cellular phones and, under 47 U.S.C. § 227(b)(3)(B), are each
6 entitled to, *inter alia*, a minimum of \$500.00 in damages for each such violation of the TCPA.

7 49. Should the Court determine that Defendant's conduct was willful and knowing, the
8 Court should, pursuant to 47 U.S.C. § 227(b)(3)(C), treble the amount of statutory damages
9 recoverable by Plaintiff and the other members of the Stop Text Class.

10 **THIRD COUNT**
11 **Violations of California's Unfair Competition Law**
12 **Cal. Bus. & Prof. Code §§ 17200 *et seq.***
13 **(On Behalf of Plaintiff and the Classes)**

14 50. Plaintiff incorporates by reference the foregoing allegations as if fully set forth
15 herein.

16 51. California's Unfair Competition Law ("UCL"), Cal Bus. & Prof. Code §§ 17200, *et*
17 *seq.*, prohibits any unlawful, unfair, or fraudulent business act or practice. A business practice need
18 only meet one of these three criteria to be considered unfair competition.

19 52. As described herein, Facebook has engaged in unfair and unlawful business practices
20 as defined by the UCL by sending, or having sent on its behalf, text messages to cellular telephone
21 numbers utilizing an automated telephone dialing system without the prior express consent of the
22 called parties, or by having such text messages sent to cellular telephone numbers after receiving
23 demands that it cease sending such text messages, in violation of 47 U.S.C. § 227(b)(1)(A)(iii).

24 53. Defendant knew that it used automated telephone dialing equipment to send text
25 messages to cellular telephone numbers belonging to Plaintiff and the members of the Classes.

26 54. Defendant violated the UCL's unfair prong and caused substantial injury to
27 consumers by knowingly accessing their cellular telephone equipment without consent, thereby
28 consuming battery life and diminishing their use, enjoyment, and utility of their cellular telephones
and cellular telephone plans. The injuries caused by Defendant's unfair conduct are not outweighed

1 by any countervailing benefits to consumers or competition, and the injuries are such that
2 consumers themselves could not have reasonably avoided them.

3 55. Defendant has also violated the UCL's unlawful prong by violating the TCPA, as
4 described above.

5 56. Defendant's unlawful and unfair conduct occurred during attempts to induce
6 consumer use of, and participation in, its social media network in order to generate advertising
7 revenues for itself, and therefore occurred in the course of Defendant's business practices.

8 57. Defendant's unfair and unlawful conduct directly and proximately caused Plaintiff
9 and members of the Classes a loss of money or property in the form of the wear and tear on their
10 cellular telephone equipment, consumed battery life, and the diminishment in the use, enjoyment,
11 value, and utility of their cellular telephone plans.

12 58. Facebook's critical decisions related to the text messaging campaign at issue were
13 coordinated in, occurred in and emanated from its headquarters in California.

14 59. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff seeks an order (1) requiring
15 Defendant to cease the unfair and unlawful practices described herein; (2) requiring Defendant to
16 restore to Plaintiff and each member of the Classes any money acquired by means of unfair and/or
17 unlawful competition (restitution); and, (3) awarding reasonable costs and attorneys' fees pursuant
18 to Cal. Code Civ. Proc. § 1021.5.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff Christine Holt, individually and on behalf of the Classes, prays for
21 the following relief:

22 A. An order certifying the Classes as defined above, appointing Plaintiff Christine Holt
23 as the representative of the Classes, and appointing her counsel as Class Counsel;

24 B. An award of actual and statutory damages;

25 C. An order declaring that Defendant's actions, as set out above, violate the TCPA;

26 D. A declaratory judgment that Defendant's telephone calling equipment constitutes an
27 automatic telephone dialing system under the TCPA;

1 E. An order declaring that Defendant's actions, as set out above, violate the UCL;

2 F. An order requiring Defendant to disgorge any ill-gotten funds acquired as a result of
3 its unlawful telephone calling practices;

4 G. An order requiring Defendant to pay restitution for the money and property lost as a
5 result of its unlawful telephone calling practices;

6 H. An order requiring Defendant to identify any third party involved in the text
7 messaging activities as set out above, as well as the terms of any contract or compensation
8 arrangement it has with such third parties;

9 I. An injunction requiring Defendant to cease all unsolicited text message activities and
10 otherwise protecting the interests of the Classes;

11 J. An injunction prohibiting Defendant from using, or contracting the use of, an
12 automatic telephone dialing system without obtaining and maintaining records of call recipients'
13 prior express consent to receive calls made with such equipment;

14 K. An injunction prohibiting Defendant from conducting any future telemarketing
15 activities until it has established an internal Do Not Call List as required by the TCPA;

16 L. An award of reasonable attorneys' fees and costs; and

17 M. Such other and further relief that the Court deems reasonable and just.

18 **JURY DEMAND**

19 Plaintiff requests a trial by jury of all claims that can be so tried.
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Respectfully submitted,

Dated: April 26, 2016

CHRISTINE HOLT, individually and on behalf of all others similarly situated,

By: /s/ Todd Logan
One of Plaintiff's Attorneys

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